

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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In re:

W.R. GRACE & CO., *et al.*<sup>1</sup>,

Reorganized Debtors.

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)  
) Chapter 11  
)  
) Case No. 01-01139 (KG)  
) Jointly Administered  
)  
) **Re: Docket No. 32826**

**DECLARATION OF R. STEPHEN MCNEILL IN SUPPORT OF NORFOLK  
SOUTHERN RAILWAY COMPANY'S (I) ANSWERING BRIEF IN OPPOSITION TO  
REORGANIZED DEBTORS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO  
FED. R. BANKR. P. 7056 FOR PARTIAL ALLOWANCE AND PARTIAL  
DISALLOWANCE OF CLAIM NO. 7021 AND (II) OPENING BRIEF IN SUPPORT OF  
NORFOLK SOUTHERN'S CROSS-MOTION FOR SUMMARY JUDGMENT**

I, R. Stephen McNeill, an attorney, declare:

1. I am an associate with the firm of Potter Anderson & Corroon, attorneys for Norfolk Southern Railway Company ("Norfolk Southern"). I submit this declaration (the "McNeill Declaration") based on my personal knowledge in further support of *Norfolk Southern Railway Company's (I) Answering Brief in Opposition to the Reorganized Debtors' Motion for Summary Judgment Pursuant to Fed. R. Bankr. P. 7056 for Partial Allowance and Partial Disallowance of Claim No. 7021 and (II) Opening Brief in Support of Norfolk Southern's Cross-Motion for Summary Judgment* [D.I. 32826] (the "NS Brief").<sup>2</sup>

2. Attached hereto as **Exhibit A** is a true and correct copy of the Agreement between W.R. Grace & Co., a predecessor-in-interest to debtor W.R. Grace & Co.-Conn., and Southern

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<sup>1</sup> The Reorganized Debtors are W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc., or "Grace") and W. R. Grace & Co.-Conn. ("Grace-Conn.").

<sup>2</sup> Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to them in the NS Brief.

Railway Company, a predecessor-in-interest to Norfolk Southern, dated as of December 15, 1980, which is referred to in the NS Brief as the “License Agreement.”

3. Attached hereto as **Exhibit B** is a true and correct copy of the Agreement between W.R. Grace & Co., a predecessor-in-interest to debtor W.R. Grace & Co.-Conn., and Southern Railway Company, a predecessor-in-interest to Norfolk Southern, dated as of December 15, 1980, which is referred to in the NS Brief as the “Side-Track Agreement.”

4. Attached hereto as **Exhibit C** is a true and correct copy of the Supplemental Agreement between W.R. Grace & Co., a predecessor-in-interest to debtor W.R. Grace & Co.-Conn., and Southern Railway Company, a predecessor-in-interest to Norfolk Southern, dated as of November 7, 1983, which is referred to in the NS Brief as the “1983 Supplement.”

5. Attached hereto as **Exhibit D** is a true and correct copy of the Supplemental Agreement between W.R. Grace & Co.-Conn. and Southern Railway Company, a predecessor-in-interest to Norfolk Southern, dated as of October 3, 1990, which is referred to in the NS Brief as the “1990 Amendment.”

6. Attached hereto as **Exhibit E** is a true and correct copy of the Complaint for Damages filed by Lester F. Kirkland, Jr. commencing an action against Norfolk Southern in the State Court of Bibb County, Georgia styled *Lester F. Kirkland, Jr. v. Norfolk Southern Railway Company*, Civ. A. No. 45273.

7. Attached hereto as **Exhibit F** is a true and correct copy of the Personal Injury Report completed by Mr. Kirkland on January 23, 1998 and identified in the NS Brief as the “January 23 Personal Injury Report.”

8. Attached hereto as **Exhibit G** is a true and correct copy of the Non-Reportable Injury Report prepared by Mr. D.M. Kimbrough, General Manager for Norfolk Southern on January 23, 1998 and the update to that report dated January 29, 1998.

9. Attached hereto as **Exhibit H** is a true and correct copy of the Personal Injury Report completed by Mr. Kirkland on January 26, 1998 and identified in the NS Brief as the “January 26 Personal Injury Report.”

10. Attached hereto as **Exhibit I** is a true and correct copy of the September 15, 1999 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation, to Harry Fishel, Plant Manager for Grace.

11. Attached hereto as **Exhibit J** is a true and correct copy of the September 29, 1999 letter from Lynne M. Durbin, Division Counsel for Grace, to Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation.

12. Attached hereto as **Exhibit K** is a true and correct copy of the October 7, 1999 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation, to Lynne M. Durbin, Division Counsel for Grace.

13. Attached hereto as **Exhibit L** is a true and correct copy of the October 14, 1999 letter from Lynne M. Durbin, Division Counsel for Grace, to Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation.

14. Attached hereto as **Exhibit M** is a true and correct copy of the July 11, 2000 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation, to Lynne M. Durbin, Division Counsel for Grace.

15. Attached hereto as **Exhibit N** is a true and correct copy of the January 9, 2001 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation, to Lynne M. Durbin, Division Counsel for Grace.

16. Attached hereto as **Exhibit O** is a true and correct copy of the March 19, 2001 letter from Scott B. Whittier, Corporate Counsel for Grace, to Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation.

17. Attached hereto as **Exhibit P** is a true and correct copy of the April 2, 2001 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation, to Scott B. Whittier, Corporate Counsel for Grace.

18. Attached hereto as **Exhibit Q** is a true and correct copy of the April 12, 2001 letter from Scott B. Whittier, Corporate Counsel for Grace, to Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation.

19. Attached hereto as **Exhibit R** is a true and correct copy of the May 30, 2001 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation to Scott B. Whittier, Corporate Counsel for Grace.

20. Attached hereto as **Exhibit S** is a true and correct copy of the July 2, 2001 letter from Benjamin M. Garland, counsel to Norfolk Southern in the Georgia Litigation to Scott B. Whittier, Corporate Counsel for Grace.

21. Attached hereto as **Exhibit T** is a true and correct copy of the March 21, 2001 Judgement in the Georgia Litigation.

22. Attached hereto as **Exhibit U** is a true and correct copy of Plaintiff's Satisfaction of Judgment and Dismissal of Action filed on July 6, 2001 in the Georgia Litigation.

23. Attached hereto as **Exhibit V** is a true and correct copy of the Lester E. Kirkland Release of Norfolk Southern Railway Company, CSX Transportation, Inc., Consolidated Rail Corporation and W.R. Grace & Company entered into on July 6, 2001.

24. Attached hereto as **Exhibit W** is a true and correct copy of the Lester Eugene Kirkland Jr. Obituary as published in The Greenville News on October 24, 2009. This Obituary was obtained by counsel from Legacy.com at the following web address: <http://www.legacy.com/obituaries/greenvilleonline/obituary.aspx?page=lifestory&pid=140265991>.

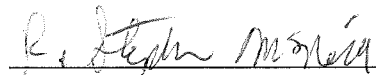
25. Attached hereto as **Exhibit X** is a true and correct redacted copy of the complete transcript in the Georgia Litigation, referred to in the NS Brief as the "Trial Record." This version of the Trial Record has been redacted to omit Mr. Kirkland's personally identifiable information, certain tax records, and certain of his medical records as required by applicable law.

26. Attached hereto as **Exhibit Y** are true and correct copies of the photographs taken by Mr. Kirkland's wife following the January 26 Accident.

*[Signature Page Follows]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 27, 2017

A handwritten signature in cursive script, appearing to read "R. Stephen McNeill", is written over a horizontal line.

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